

Serial No. 09/698,301

Docket No.: KCC-15,568

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-7, 9-15, and 17-35 are pending.

**Interview Summary**

Applicants' undersigned attorney also thanks the Examiner for her comments made during the 17 July 2003 telephone interview. During this telephone interview, proposed amendments to the pending independent claims were discussed, but no agreement was reached.

**Amendment to the Claims**

Claims 1-7, 9-15, and 17-35 have been examined, with no claims being allowed. Applicants have amended Claims 1, 9, and 17.

Claims 1, 9, and 17 have been amended to include the limitation that a liquid that permeates the outer cover can be expelled through the outer cover into an open environment outside of the garment. Support for this amendment is provided throughout the specification, such as at page 3, lines 5-10.

Claims 1, 9, and 17 have also been amended to include the limitation that the absorbent assembly comprises cellulosic fluff or superabsorbent material. Support for this amendment is provided, for example, at page 18, lines 8-22, of the specification.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims remains unchanged.

**Claim Rejections - 35 USC §103****A. Garcia in view of Yeo in further view of Slingland**

The rejection of Claims 1-7, 9-15, and 17-24 under 35 USC §103(a) as being unpatentable over Garcia (U.S. Patent No. 5,792,132) in view of Yeo (U.S. Patent No. 5,509,913) in further view of Slingland (U.S. Design Patent No. 377,980) is respectfully traversed.

KCC-2047

7

MR/S

Serial No. 09/698,301

Docket No.: KCC-15,568

Garcia discloses an incontinence diaper with a drain that is provided to release urine from the garment *into an attached reservoir* while preventing bowel evacuations from leaving an interior area of the garment. It is an object of the invention of Garcia to provide an incontinence diaper system that is of a "durable and reliable construction" (Col. 2, lines 51-53). There is no indication or suggestion that any portion of the garment in Garcia becomes permeable when in contact with a liquid. Furthermore, contrary to the Examiner's indication that "Garcia discloses an absorbent swimsuit assembly," there is no mention of any garments intended for use as swimwear in Garcia. In fact, it would be prohibitively difficult to use the garment in Garcia as a swimwear garment because the garment includes a drain funnel connected to a length of tubing with a reservoir at the end of the tubing, wherein the reservoir is designed to store fluid that drains from inside the garment. In a swimming environment, both the Garcia garment and the reservoir attached to the Garcia garment would fill up with swim water thereby causing sagging and the uncontrollable release of waste materials through the leg openings, which is precisely the sort of situation that the garment of the invention was designed to avoid.

Yeo discloses a flushable material that can be used to make a variety of flushable products. Because these products are flushable, the products in their entirety are made of flushable material. Yeo does not disclose or suggest articles containing any durable material, or even a combination of durable material with the flushable material of Yeo.

Slingland merely illustrates a disposable swim diaper. Slingland fails to disclose or suggest any permeability attributes of an outer cover of the diaper. Instead, the Slingland garment appears to have a one-piece outer cover without any apertures or any other indications that the outer cover may be liquid-permeable.

Applicants' invention, as recited in independent Claims 1, 9, and 17, is directed to an absorbent swimwear garment that includes a selectively liquid-permeable or partially liquid-permeable outer cover, or an outer cover that is liquid-permeable in a crotch area, wherein a liquid that permeates the outer cover can be expelled through the outer cover into an open environment outside of the garment.

Serial No. 09/698,301

Docket No.: KCC-15,568

Neither Garcia nor Yeo nor Slingland, nor the combination thereof, discloses or suggests such a garment.

There is no suggestion to combine the teachings of Garcia with the teachings of Yeo. In fact, Yeo teaches away from Garcia because Garcia is directed to a "durable" incontinence garment, whereas Yeo is directed to flushable products. Because excess liquid present in the Garcia garment is funneled into the reservoir, it would be illogical to combine the flushable materials of Yeo with the Garcia garment. Even if Garcia and Yeo were combined, the incorporation of the Yeo flushable materials into the Garcia garment would result in extraneous material that, if anything, would inhibit the function of the Garcia garment.

Furthermore, there is no suggestion to combine the design features of Garcia with the design features of Slingland. As explained above, the inclusion of the reservoir and tubing system in Garcia teaches away from the use of the Garcia garment as a swimwear garment due to the likelihood that the Garcia garment and attached tubing and reservoir would quickly fill up with swim water and would be unable to drain the swim water through any location other than the leg openings and waist opening.

In any case, a combination of the incontinence diaper of Garcia with the flushable material of Yeo and the swimwear design of Slingland fails to disclose or suggest a swimwear garment including a selectively liquid-permeable or partially liquid-permeable outer cover, or an outer cover that is liquid-permeable in a crotch area, wherein a liquid that permeates the outer cover can be expelled through the outer cover into an open environment outside of the garment.

With respect to Claims 2, 3, 4, 10, 11, 12, 18, 19, and 20, there is no suggestion in either Garcia or Yeo or Slingland to include a type of liquid-permeable material in an outer cover that prevents the release of liquid under low pressure through the drain and allows the release of liquid under a higher pressure through the same drain. Given the constructions disclosed in Garcia, Yeo, and Slingland, there is no suggestion to optimize the materials therein to create a material that has pressure-sensitive features. Instead, the Garcia garment merely has a hole that functions as an open drain that allows all free-flowing liquid, regardless of its pressure, to flow

Serial No. 09/698,301

Docket No.: KCC-15,568

through the tubing into the reservoir. The flushable material in Yeo disintegrates and disperses when submerged in water, which is quite a different concept than controlling the release of liquid through the material based on the pressure of the liquid. Slingland provides no suggestion whatsoever of using a pressure-sensitive material.

For at least the reasons given above, Applicants respectfully submit that the teachings of Garcia in view of Yeo in further view of Slingland fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**B. Garcia in view of Yeo in further view of Slingland in further view of Sauer**

The rejection of Claims 25-35 under 35 USC §103(a) as being unpatentable over Garcia in view of Yeo in further view of Slingland in further view of Sauer (U.S. Patent No. 5,674,213) is respectfully traversed.

As discussed above, neither Garcia nor Yeo nor Slingland, nor the combination thereof, discloses or suggests a swimwear garment including an outer cover that is liquid-permeable in the crotch area, wherein a liquid that permeates the outer cover can be expelled through the outer cover into an open environment outside of the garment, as recited in independent Claim 17 from which Claims 25-35 depend.

Sauer discloses an absorbent article having containment flaps with passageways or openings near the base of the flaps that lead into a receiving reservoir. The reservoir receives urine, fecal material or other exudates. Sauer does not disclose or suggest an absorbent swimwear garment including an outer cover that is liquid-permeable in a crotch area, or having liquid-permeable containment flaps that allow water to drain from the garment. If the garment of Sauer were used as a swimwear garment, the reservoirs associated with the containment flaps would fill up with swim water once a wearer entered a pool or other swim area, thereby creating the opposite effect intended by Applicants' invention. In other words, Applicants' invention is used to prevent the accumulation of swim water in an absorbent garment, whereas Sauer, like Garcia, includes reservoirs to contain the overflow of any exudates that

Serial No. 09/698,301

Docket No.: KCC-15,568

originate within the garment but does not include any features that allow excess liquid to escape from the garment.

In addition to the lack of motivation to combine the teachings of Garcia with the teachings of either Yeo or Slingland, as explained above, there is no suggestion to further combine the teachings of Sauer with either Garcia or Yeo or Slingland. Sauer discloses an absorbent garment having built-in reservoirs, Garcia discloses an incontinence diaper with a drain attached to a reservoir outside the diaper, Yeo discloses a flushable material that can be used to make a variety of flushable products, and Slingland discloses a disposable swim diaper having an aquatic graphic around the waistband. Even if Garcia, Yeo, Slingland, and Sauer were combined, a person skilled in the art would not derive Applicants' invention from the combination thereof because none of these references discloses or suggests a garment including an outer cover in which a liquid that permeates the outer cover can be expelled through the outer cover into an open environment outside of the garment.

For at least the reasons given above, Applicants respectfully submit that the teachings of Garcia in view of Yeo in further view of Slingland in further view of Sauer fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

#### **Double Patenting Rejection**

The provisional rejection of Claims 1-35 under the judicially created doctrine of obviousness-type double patenting over claims 1-40 of copending U.S. Application No. 09/698,346 and claims 1-29 of copending U.S. Application No. 09/749,253 is respectfully traversed in view of the attached Terminal Disclaimer.

Serial No. 09/698,301

Docket No.: KCC-15,568

**Conclusion**

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



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